

PURDUE ROAD SCHOOL 2019

# WHAT TO EXPECT FROM THE PLAN COMMISSION: A PRIMER FOR ENGINEERS AND SURVEYORS

TUESDAY, MARCH 5, 2019, 1:00 – 2:50 PM

K.K. GERHART-FRITZ, FAICP, THE PLANNING WORKSHOP, INC.



## PLANNING

Still a good thing to do first.

# WHO ARE YOU? – SHOW OF HANDS

- Engineer
  - Local or State Government Employee
  - Consultant
  - Other
- Surveyor
  - Local or State Government Employee
  - Consultant
  - Other
- Other?
  - Elected Official
  - Consultant
  - Other





# HOW ENGINEERS & SURVEYORS INTERACT WITH THE PLAN COMMISSION:



Serve as Plan Commission members “by virtue of the office”

City Engineer on City Plan Commission  
County Surveyor on County Plan Commission



Consultant representing an applicant before Plan Commission



This session explains the basics of local Indiana plan commissions' duties and processes, with Indiana State Code references.



Tips for serving on and appearing before a plan commission will be provided, and there will be plenty of time for questions.



# GOVERNMENT FRAMEWORK

- Planning & Land Use Control – Local Zoning/Subdivision Ordinances
- Parameters Set by Enabling Act – State Law
- Planning & Zoning Enabled and Upheld -- Federal





# PLANNING IN INDIANA

- Indiana's planning laws are more minimal than most states
- Planning and Zoning is not mandatory – up to each local government (City, Town, County to choose)
- If you choose to have Zoning, Indiana Code requires that you have a Plan
- >90% of Indiana Counties have Plan Commissions, Every City?, Most Towns
- You can have Subdivision Control without zoning or a comprehensive plan



**PROPER  
PLANNING  
PREVENTS  
PISS POOR  
PERFORMANCE**

## 4 LOCAL DOCUMENTS TO KNOW:

- Comprehensive Plan
  - Zoning Ordinance
  - Subdivision Ordinance
  - Rules of Procedure for BZA & Plan Commission
- or a Unified Development Ordinance



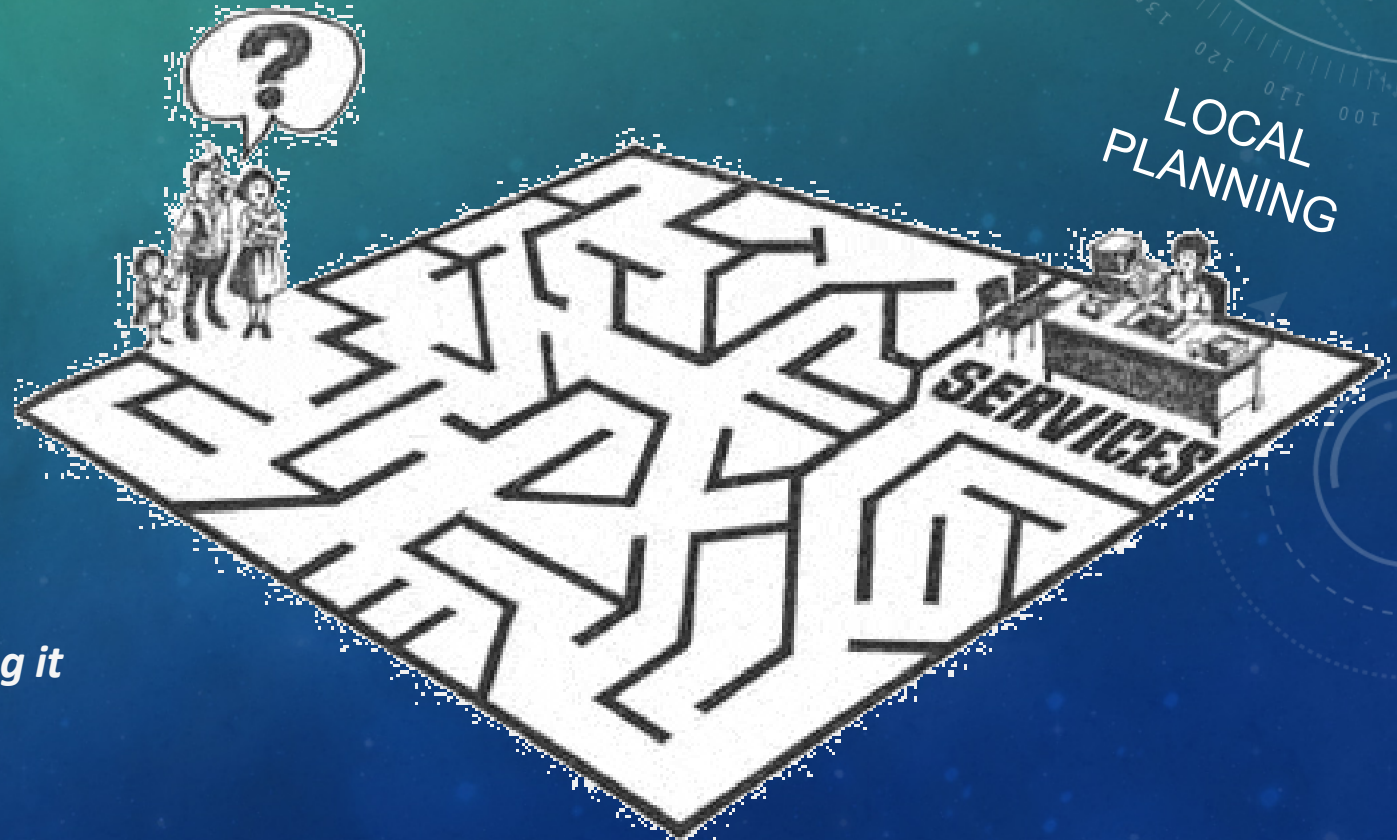


# LOCAL PLANNING STRUCTURE

*County Council does set budget for County Planning and is represented on Plan Commission, but this group is not actually part of the local planning process*

- Governing Body
  - County Commissioners
  - Town Council
  - City Council
- Plan Commission
- Board of Zoning Appeals

*If it is confusing to us, think how confusing it is to the public!*



# LOCAL GOVERNING BODY

## COUNTY COMMISSIONERS, TOWN COUNCIL OR CITY COUNCIL

- Elected
- Power to adopt comprehensive plan
  - Governing body must adopt, IC 36-7-4-509
- Power to adopt zoning ordinance
- Power to adopt subdivision ordinance
- Appoints board & commission members
- Capital investment decisions & budgets for towns & cities





# BOARD OF ZONING APPEALS

- Appointed
- Quasi-Judicial
- Power to Grant Special Exceptions/Conditional Uses
- Power to Hear Appeals
- Power to Grant Variances

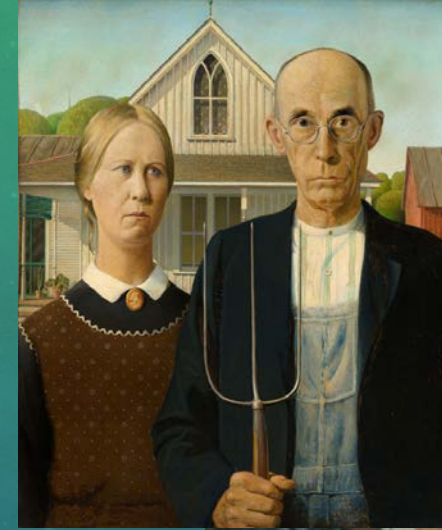




# PLAN COMMISSION

- Appointed or serve by virtue of their office per state law
- *Raise your Hand if you serve on the Plan Commission*
- Prepares\* Comp Plan & Amdts (IC 36-7-4-501)
- Prepares\* Zoning Ord & Amdts (IC 36-7-4-602a)
- Prepares\* Sub Regs & Amdts (IC 36-7-4-701b)
- Provides Rezoning Recs (IC 36-7-4-602b)
- Provides Comp Plan & Zoning Ord Recs
- Subdivision Plat approval & Development Plan Approval

\* with help from staff, consultants, volunteers





# PLAN COMMISSION'S RESPONSIBILITIES – RECOMMENDATIONS TO LEGISLATIVE BODY

- Comprehensive Plan (all elements, including Thoroughfare Plan) & Amdts
- Zoning & Subdivision Ordinances (Unified Development Ordinance) & Amdts
- Rezoning

*Engineers and Surveyors should be leaders in recommending standards and content in the ordinances, due to your expertise. You should also be pushing for regular amendments and updates to the plan to stay current with best practices*





# PLAN COMMISSION'S RESPONSIBILITIES – FINAL APPROVALS

- Subdivision Plats
- Subdivision Standards Waivers
- PUD Detailed Plan
- Development Plan





# LOCAL GOVERNMENT REVIEW

- Which of those is **most powerful**?
  - Local Legislative Body
  - Plan Commission
  - BZA
- What does that suggest regarding planning?
  - Communication
  - Coordination

*There are several other participants in the planning process – these are just local government participants*





# LOCAL PLANNING BOARD/COMMISSION GENERAL RESPONSIBILITIES

- 1) To represent the rest of the community.
  - How does community give Plan Commission (and BZA) direction (2 ways)?
- 2) To educate yourself and others on the issue(s).
- 3) To support the process and recognize the roles of the other participants.
- 4) To make a defensible decision.





# WHO DOES THE PLANNING?

- In **Indiana**, it is the **plan commission's responsibility** to prepare and adopt a plan and to recommend it to the city or town council or county commissioners for adoption.
- The plan commission may be assisted by staff, by consultants, by volunteers, or by any combination.

*Engineers and Surveyors should be pushing for regular amendments and updates to the comprehensive plan and the thoroughfare plan to stay current with best practices!*





# COMPREHENSIVE PLAN – THE MOST IMPORTANT LOCAL PLANNING POLICY

- Guideline, not ordinance
- Long-range (looks forward 20+ years)
- Covers entire jurisdiction (and maybe more)
- Traditionally addresses physical elements

*Examples of other plans that may may be elements of a Comprehensive Plan:  
Thoroughfare Plan, Downtown Plan, Corridor Plan, Park Plan, Bicycle & Pedestrian Plan, Etc.*





# TOP IMPLEMENTATION TOOLS

*Engineers and Surveyors should be leaders in recommending standards and content in the ordinances, due to your expertise. You should also be pushing for regular amendments and updates to the ordinances to stay current with best practices*

- Best or worst way to implement the policies in the comprehensive plan & it's elements:
  - Zoning & Subdivision Ordinances (or Unified Development Ordinance)





# WHO REVIEWS PLAN COMMISSION APPLICATIONS?

- Planning Staff – not everyone has – written recommendation!
- **Technical Review Committee (Recommended, not required)**
  - *Should include written recommendation!*
  - *Open Door Law – you may attend, but not required to let you speak*
- Plan Commission Members

*Engineers and Surveyors should be part of the Technical Review Committee! You have expertise that is needed in the review.*





# WHAT ARE PLANNING DECISIONS SUPPOSED TO BE BASED ON?

HINT – IT ISN'T RANDOM...



# DECISION MAKERS CAN NOT LEGALLY CONSIDER:

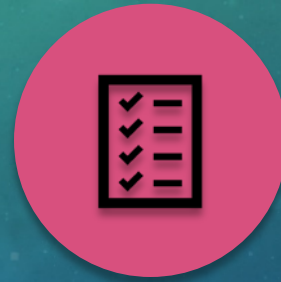
- **Public Popularity of Application**
  - NIMBYs & LULUs
- Previous Performance of Applicant
- Issues unrelated to the standards/criteria
  - The Neighbor's Barking Dog



# LOCAL PLANNING DECISIONS MUST BE BASED ON LEGAL CRITERIA



If you are a Plan Commission member, base your vote on the applicable criteria



If you are representing an applicant before Plan Commission (or BZA) base your presentation on the applicable criteria



Depending on the application, criteria may be found in either state law or local ordinance



**Must meet all criteria, not just the majority**



# WRITTEN COMMITMENTS MAY BE REQUIRED (IC 36-7-4-1015)

## What are written commitments?



- Written commitments are “permanent conditions” that are tied to the property
  - Regular conditions are meant to be short-term requirements administered by planning staff
- Must be enabled in local Zoning Ordinance (UDO)
- Must be recorded by County Recorder
- Plan Commission, BZA and Legislative Body may require written commitments as a condition of approval
- Applicant may voluntarily offer written commitments as part of application, but local planning body does not have to accept as is

*Examples of written commitments may include prohibition of a certain land use on the property that is normally permitted, requirement for permanent screening on the site, limits on hours of operation, etc.*





# DIFFERENT PERSPECTIVES, DIFFERENT REGULATIONS...

## URBAN – SUBURBAN-RURAL: WHICH ARE YOU?

THE NEIGHBOR TEST...



# IF YOU STAND NAKED ON THE FRONT PORCH

And the neighbors can't see you... it's RURAL





# IF YOU STAND NAKED ON THE FRONT PORCH

And the neighbors call the cops on you... it's  
SUBURBAN





IF YOU STAND NAKED ON THE FRONT PORCH

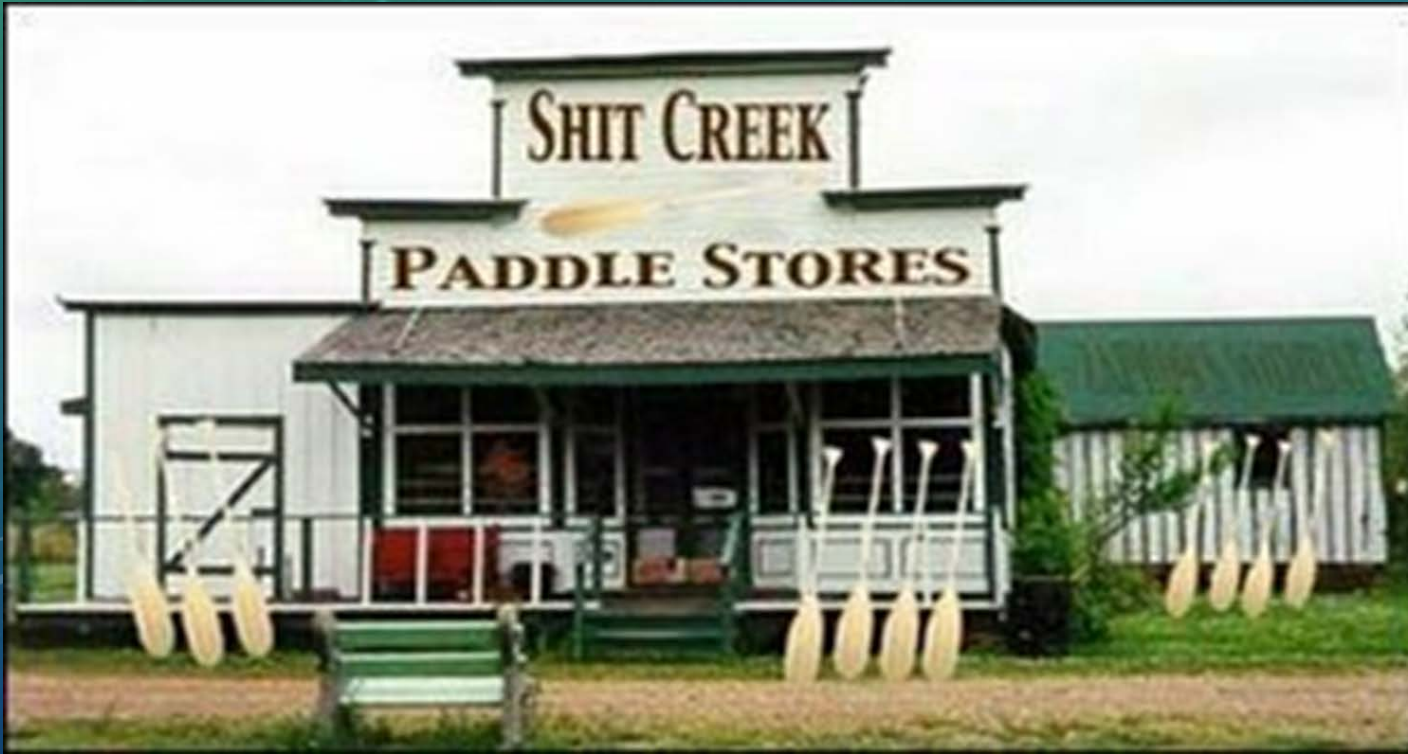
And the neighbors ignore you... it's URBAN





# PLAN COMMISSION DECISION CRITERIA BASED ON:

- State Law Criteria
  - Rezoning
- Local Law Criteria
  - Subdivisions
  - Subdivision Waivers
  - Development Plans
  - PUD Detailed Development Plans

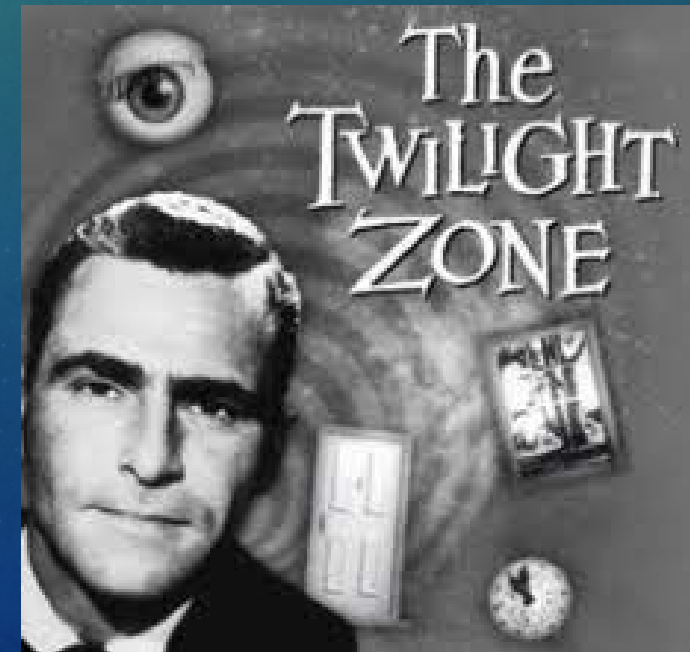


# WHAT ARE REZONINGS?

- Zoning has two parts:
  1. zoning map that shows zones in a community ,and
  2. written zoning ordinance that details the standards for those districts
- A rezoning is an amendment to the zoning map that changes the zoning district for one or more parcels
- Rezoning may be initiated by either the local government or the owner of at least 51% of the property involved

*Rezoning occurs because the property owner wants to develop with a land use that is not permitted in the existing zoning district*

Requires a Public Hearing at Plan Commission





# REZONINGS

- PLAN COMMISSION MAKES RECOMMENDATION TO LEGISLATIVE BODY, WHO MAKES FINAL DECISION
- LEGISLATIVE BODY DOES NOT HAVE TO FOLLOW THE RECOMMENDATION

## IC 36-7-4-603 REZONING CRITERIA

The plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

*Engineers and Surveyors should have insight on responsible growth and development. Are the existing roads adequate? Are sewers in place?*

# WHAT ARE DEVELOPMENT PLANS? (IC 36-7-4-1400)

- Development Plans are detailed site plans
- Plan Commission may delegate to a committee or staff for approval
- Does not require a Public Hearing, only public meeting





# DEVELOPMENT PLANS

– FINAL DECISION, DOES NOT GO TO LEGISLATIVE BODY

## DEVELOPMENT PLAN CRITERIA:

- There are no state law criteria like for zoning. Each community sets their own standards
- Follow zoning ordinance (UDO) standards -- if proposed plan meets all zoning ordinance (UDO) standards, then plan commission must approve it!
- ***If Plan Commission doesn't like standards, change them – can't deny plan just because don't like ordinance standards***

*Engineers and Surveyors should be major reviewers of the Development Plan! It is a technical document and you have specific expertise to offer.*





# WHAT ARE SUBDIVISION PLATS?

**Per IC 36-7-1-19**, "Subdivision" means the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by the legislative body under [IC 36-7-4](#).

- So local Subdivision Ordinance defines
- May be different types of subdivisions, up to local jurisdiction to decide
  - Major, Minor, Replats, Commercial/Industrial, AG, etc.
- May be exemptions from subdivision regulations, up to local jurisdiction to decide (lot splits)





# WHAT ARE SUBDIVISION PLATS?

- Primary Approval (Plan Commission or may delegate to Plat Committee) – Requires a Public Hearing
- Secondary Approval (Plan Commission or may delegate to Plat Committee or Staff) – Does not require a public hearing





# SUBDIVISION PLATS (IC 36-7-4-700)

- Final decision, does not go to legislative body for approval
  - They only see plat for ROW dedication or Financial Guarantees
- Subdivision Criteria: There are no state law criteria like for zoning. Each community sets their own standards in their Subdivision Ordinance (UDO)
- Follow your standards -- if proposed plat meets all subdivision ordinance standards, then plan commission must approve it!
- ***If don't like standards, change them!***

*Engineers and Surveyors should be drivers of the content in a Subdivision Ordinance! It is a technical document that is beyond the understanding of most Plan Commission members*





# SUBDIVISION WAIVERS (IC 36-7-4-702 C)

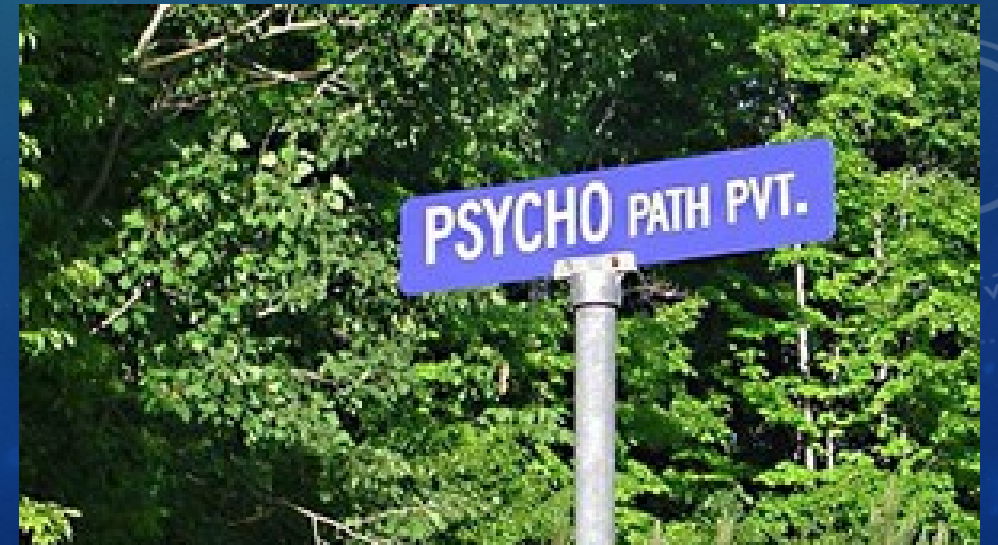
## – PLAN COMMISSION OR PLAT COMMITTEE MAKES FINAL DECISION

### Criteria:

- Waivers from Subdivision Ordinance Standards are the jurisdiction of Plan Commission, not BZA!
- Must 1<sup>st</sup> be enabled in local Subdivision Ordinance (UDO)
- Subdivision Ordinance should contain criteria for subdivision waivers
- Public Hearing in Conjunction with Primary Plat

*Engineers and Surveyors should be making a recommendation on subdivision waivers! You have expertise that is needed.*

Subdivision Waiver Examples: Sidewalks, private streets, geometrics, etc.





# BOARD OF ZONING APPEALS DECISION CRITERIA BASED ON:

- State Law Criteria
  - Use Variance
  - Development Standards Variance
- Local Law Criteria
  - Special Exception/Conditional Use

BZA looks at zoning and does not have to include an engineer or surveyor as a member





# VARIANCES

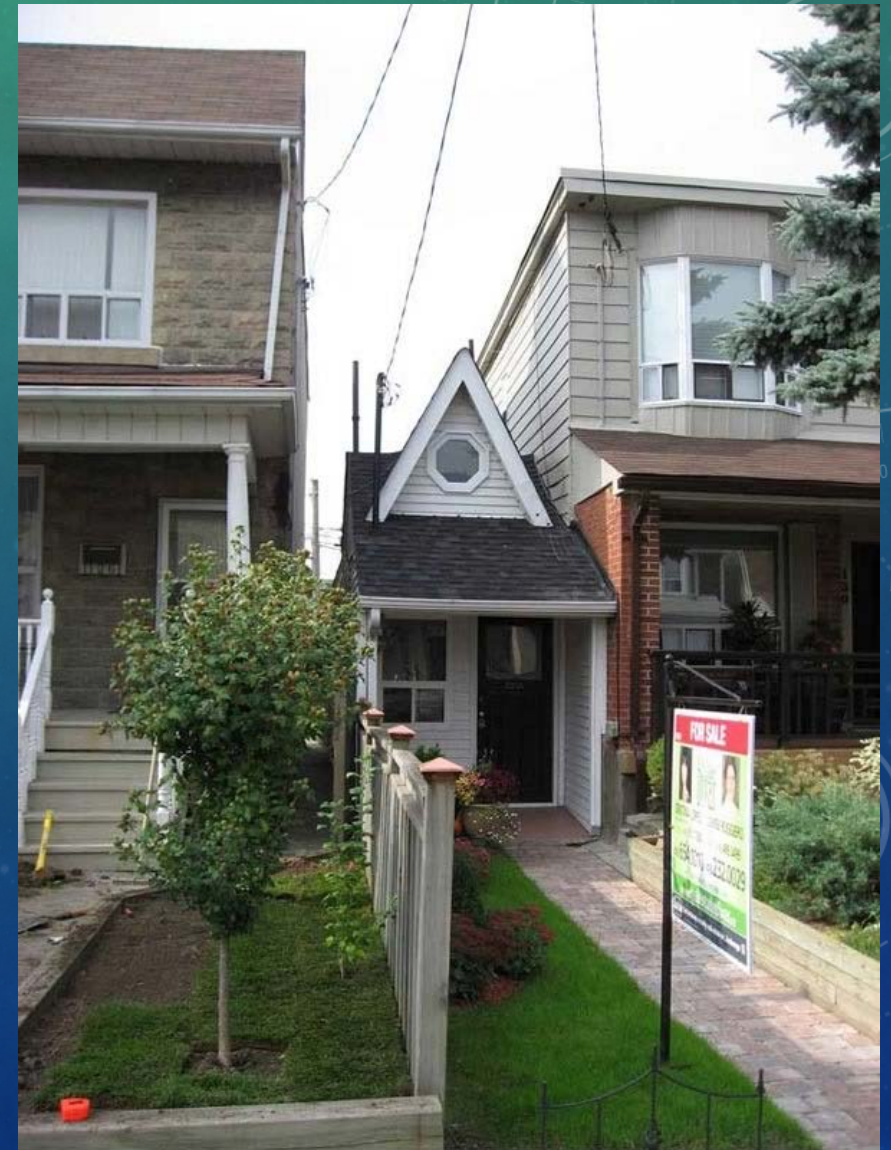
## -USE & DEVELOPMENT STANDARDS

Variances are a way to legally say you don't have to follow the same rules as everyone else

Variances solve problems created by applying the generalities of Zoning Ordinance (UDO) to specific unusual situations -- introduces needed flexibility to zoning.

- Variances meant to be occasional, not the rule.

Reminder: Waivers from Subdivision Ordinance Standards are the jurisdiction of Plan Commission, not BZA!





# BZA: USE VARIANCE

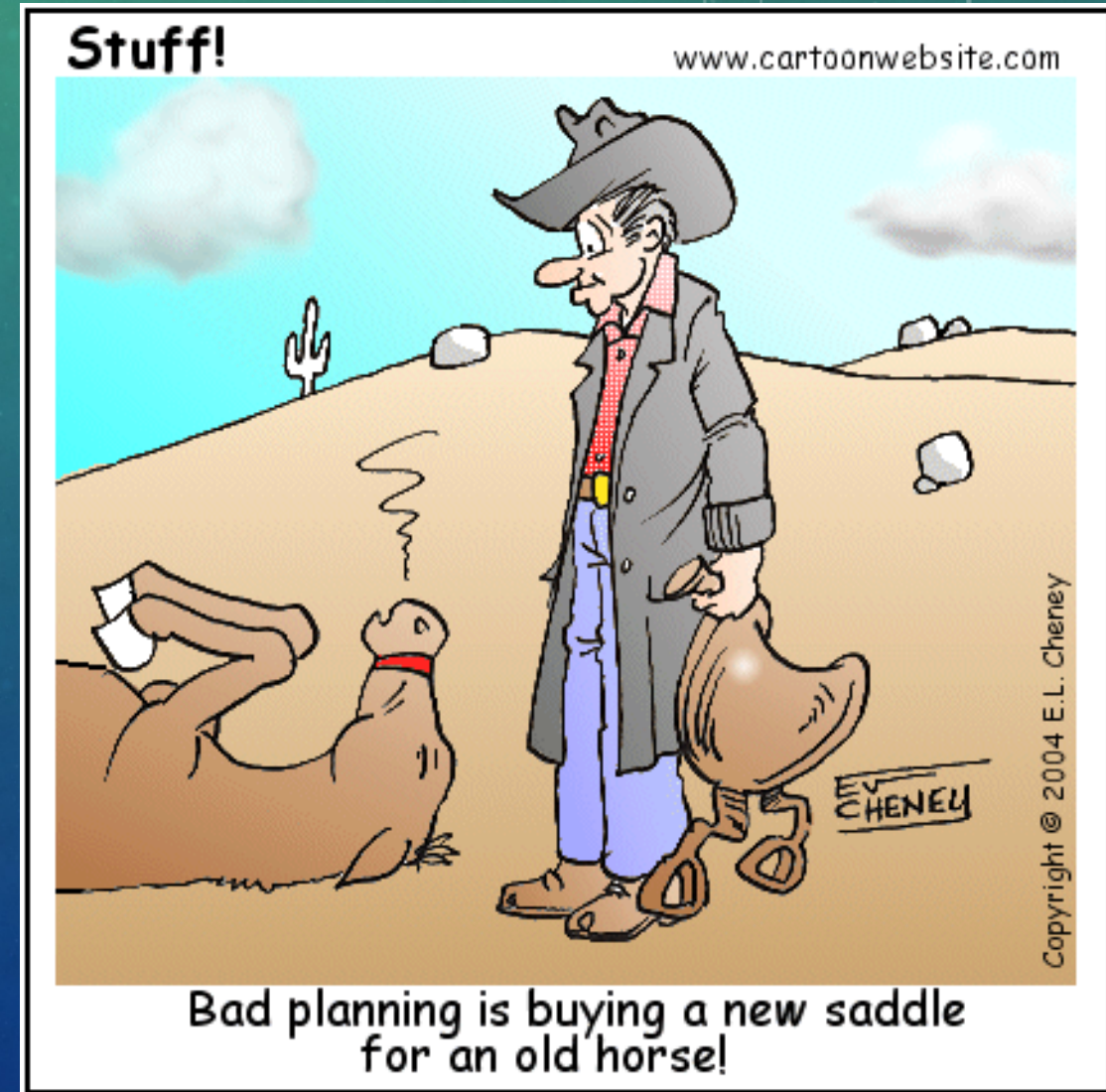
## *What is a Use Variance?*

Allows a land use that is not permitted in the zoning district where the property is located

- Requires a Public Hearing

Use Variance not allowed for local governments that are part of an Area Plan Commission per IC 36-7-4-918.4

- *An Area Plan Commission is a County Plan Commission that has at least one city or town join with them. The different jurisdictions may be under the same plan and ordinances or each have their own plan and ordinances.*





# FOR BZA: USE VARIANCE CRITERIA (IC 36-7-4-918.4) BZA MAKES FINAL DECISION\*

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) the need for the variance arises from some condition peculiar to the property involved



*Engineers and Surveyors  
should have input on  
public health and safety!  
Think traffic, flooding, etc.*



# FOR BZA: USE VARIANCE CRITERIA (IC 36-7-4-918.4)

*(continued from previous slide)*

- (4) the strict application of the terms of the zoning ordinance will constitute an **unnecessary hardship** if applied to the property for which the variance is sought
- (5) the approval doesn't interfere substantially with the adopted comprehensive plan





# BZA: DEVELOPMENT STANDARDS VARIANCE

## *What is a Development Standards Variance?*

- Development standards are zoning requirements (not subdivision standards) including parking requirements, required setbacks, building height, signage, landscaping, architectural standards, etc.
- Requires a Public Hearing



EXERCISE

Welcome to America.



# FOR BZA: DEVELOPMENT STANDARDS VARIANCE CRITERIA (IC 36-7-4-918.5) **BZA MAKES FINAL DECISION\***

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property

*Engineers and Surveyors should have input on public health and safety! Think traffic, flooding, etc.*





# INDIANA CODE ALLOWS EXTRA DEVELOPMENT STANDARDS VARIANCE CRITERIA

IC 36-7-4-918.5 (a) (3) says that for developmental standards variances, “... your local ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by state law.”

Many cities, towns and counties in Indiana have added additional criteria in their local ordinance, primarily:

- that the variance granted is the minimum necessary
- that the variance granted does not correct a hardship caused by a former or current owner of the property.





# BZA: SPECIAL EXCEPTION/CONDITIONAL/CONTINGENT USES

## *What is a Special Exception/Conditional Use?*

- Use not permitted by right, but may be appropriate in zoning district, depending on proposed site
- Local governments decides which uses and designates in Zoning Ordinance (UDO)
  - Often NIMBYs or LULUs
- Local government sets own criteria
  - Basic set in Zoning Ordinance (UDO) for all
  - May add more detailed or unique for certain uses
- Requires a Public Hearing





# BZA: MAKES FINAL DECISION\*

## SPECIAL EXCEPTION/CONDITIONAL/CONTINGENT USES

- Use may be appropriate in zoning district, depending on how it works on the proposed site
- Local governments decides whether to use
- Local government sets own criteria
  - basic set for all
  - May add more detailed or unique for certain uses

*Engineers and Surveyors  
may have input on the  
suitability of the site!  
Think traffic circulation,  
drainage, etc.*





IF YOU ARE  
REPRESENTING  
SOMEONE:  
THE APPLICATION &  
MEETING





# APPLICATION

- Work with planning staff – they review and may make recommendation
  - Voluntary pre-meeting, official or unofficial
  - Every ordinance is different – research local standards and ask if you have questions
  - Submit complete application & materials
  - Don't ask for special treatment
  - Heed their advice
- Is there a Technical Review Committee?
  - If so, attend (open door law) but only speak if asked to
  - Address their issues and resubmit well before the public meeting

Playing *Lego* with my daughter is frustrating. She doesn't want to build anything, she just wants to wreck what I'm trying to build.



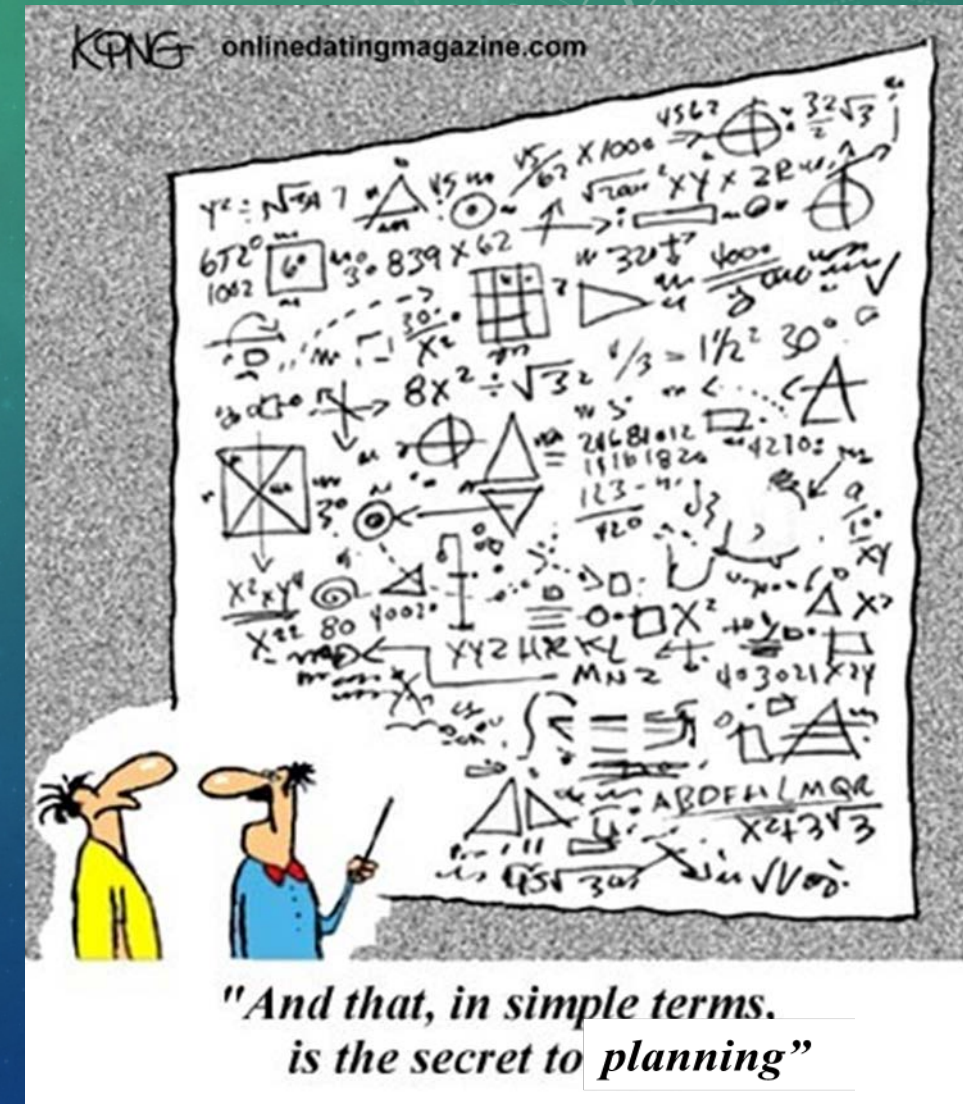
Like a little city planner!

That's what I call her.

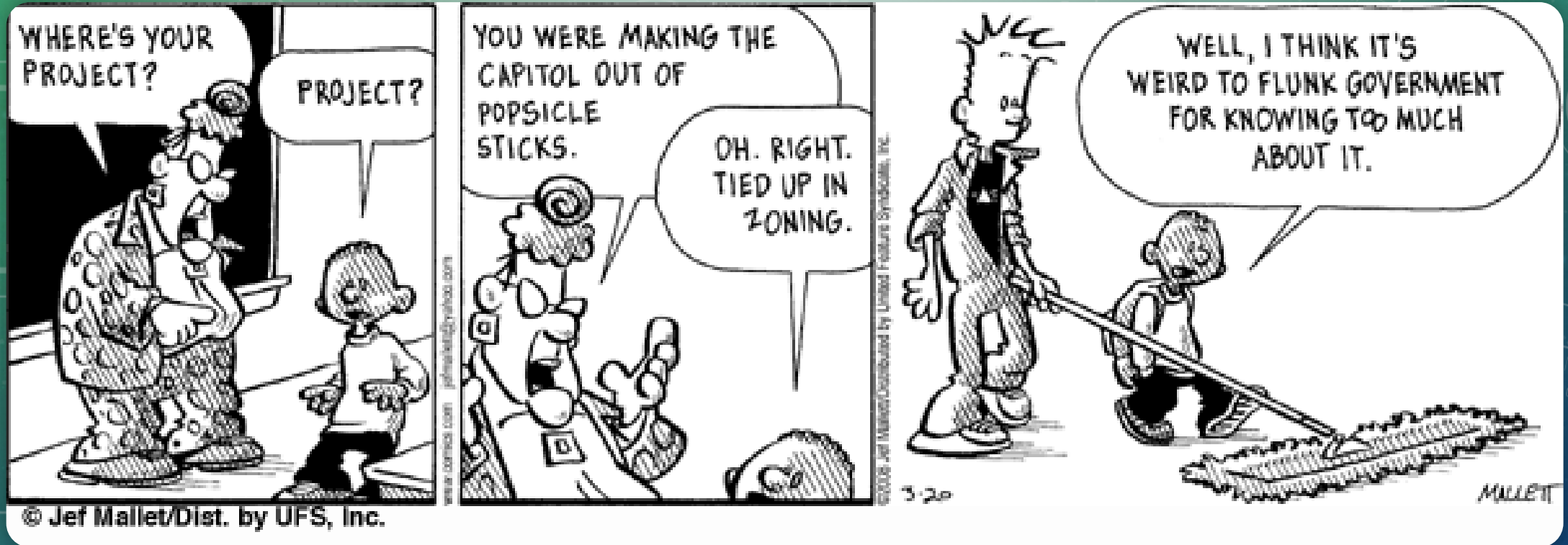


# THE MEETING

- Be Prepared
  - Get copy of staff report & agenda in advance
  - If controversial, consider pre-meeting with neighbors
  - Is it public hearing or public meeting
  - Find out expectations from staff for your presentation (order of business, time limit, A/V set-up, etc.)
  - Focus presentation on Criteria
  - Be polite to everyone involved, not a know-it-all







IF YOU ARE SERVING ON PLAN COMMISSION:  
THE MEETING



# EVALUATE THE PROJECT

- Do your homework
  - Meet with applicant?
  - Site visit (drive-by?)
  - Anticipate technical information you might be asked for
- Ask for Staff Recommendation
- Consider relevant citizen input
- Does it meet criteria?





# MAKING A DECISION

- **What are relevant issues in a hearing?**
  - Surrounding area and site conditions, ordinance standards, APPROVAL CRITERIA
- 
- **What isn't appropriate in a hearing?**
  - Cost/profit, sentiment, emotions (don't like the applicant), rehashing the past, subjectivity





# MAKING GOOD DECISIONS

- Plan Commission and BZA can't grant unless criteria/standards are met, whether from State Law (Rezoning, Variances) or local ordinances (Subdivision Plats, development plans)
- Must meet all criteria/standards for approval or have a darn good reason not to (Subdivision modification granted, etc.)

**CAUTION**

FOLLOW  
LEGAL  
CRITERIA



# AT THE MEETING

- Have a public discussion -- don't pass notes or whisper
- **Explain your vote**
- Make sure your input is meaningful

*Engineers and Surveyors should be leaders in the group's discussion and decision-making, due to your expertise.*



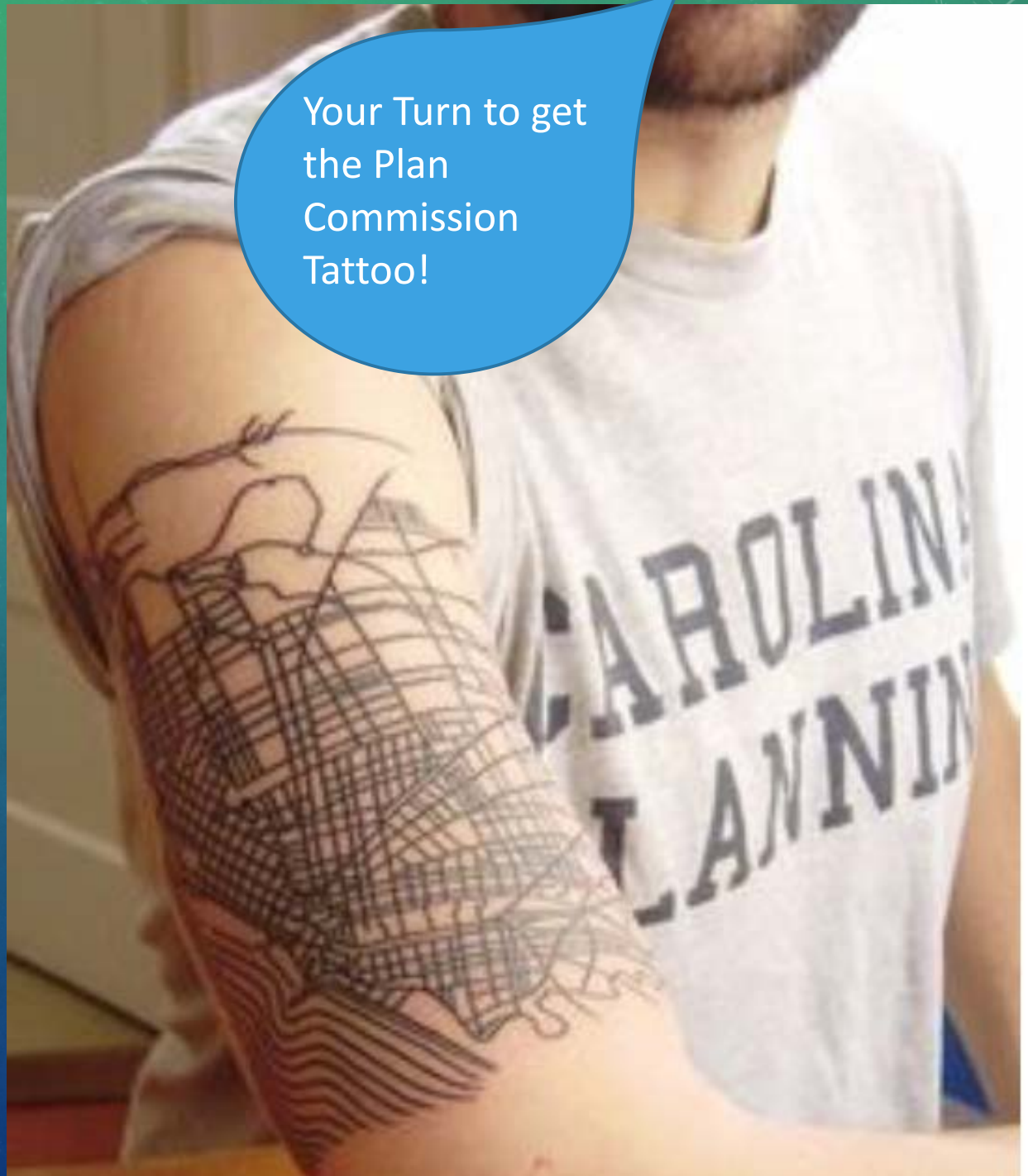


# DECISION-MAKING CONCERNS

## ■ Peer Pressure -

- Resist it!
- Do not want to offend colleagues or appear to be unconventional or uncooperative.
- Represent a variety of views, so there is no reason why decisions should always be unanimous.

Your Turn to get the Plan Commission Tattoo!





# DECISION-MAKING CONCERNS

## Public Pressure

- Difficult to make unpopular decision, especially in small towns & Rural areas.
- Audience isn't always right; doesn't represent whole community.
- Proposed land use changes generate emotional responses



**ALWAYS REMEMBER  
POPULARITY IS NOT AN  
INDICATION OF  
QUALITY.**



# DECISION-MAKING CONCERNS

- **Developer & Business Pressure**
  - Represents one view, aimed at reducing costs and increasing profits.
  - Plan Commission & BZA should not accept inappropriate development to provide profits





# DECISION-MAKING CONCERNS

## ■ Political Pressure --

- Occasionally elected officials lobby for certain votes.
- Plan commissions & BZA intended to be independent bodies -- obligated to vote for good planning.



Legislative Body has a Different Perspective!

***NO HEART, NO BRAIN  
AND NO COURAGE. GUYS,  
WHY ARE YOU NOT  
POLITICIANS?***





# DECISION-MAKING CONCERNS

## ■ **Compromise --**

- Want to find a middle position between developers and opponents.
- Can leave everyone unhappy when neither side gets what it wants.
- Developers quickly learn the compromise game, asking for more than they want or expect, in order to end up with the project they initially desired.
- Compromise works if plan commission/BZA can broker a win-win solution, but regular compromise won't result in good development.





# WHEN CAN YOU DENY A CASE?

*Which is the correct answer?*

1. when you don't have a quorum
2. if it is unpopular
3. **if all criteria haven't been met**





# THE END – QUESTIONS?





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*Communication + Education = Effective Planning*



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